Office - Supreme Court, U.S.
FILED
NOV 15 1982
ALEXANDER L. STEVAS
CLERK

No. 82-582

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

BOB ASHMORE, T. M. SHEFFIELD, BRUCE LEE, BOBBY O. BLEVINS, HERMAN DANIELS, FLOYD GRAY and JIM FERRIS, *Petitioners*

vs.

TARRANT COUNTY and COMMISSIONERS' COURT OF TARRANT COUNTY, TEXAS
MIKE MONCRIEF, County Judge
R. T. "DICK" ANDERSEN, County Commissioner
R. L. "JERRY" MEBUS, County Commissioner
A. LYN GREGORY, County Commissioner
B. D. GRIFFIN, County Commissioner
Respondents

On Petition for a Writ of Certiorari to the Supreme Court of Texas

Respondents' Brief in Opposition

TIM CURRY
Criminal District Attorney
Tarrant County, Texas

FREDERICK M. SCHATTMAN
Assistant District Attorney
Tarrant County, Texas
200 West Belknap Street
Fort Worth, Texas 76102
(817) 334-1657

Attorneys for Respondents

Fort Worth Brief Printing Co., 610 South Jennings Avenue, Fort Worth, Texas 76104 Phone 817-332-4070

SUBJECT INDEX

Page

SUBJECT INDEX i

TABLE OF AUTHORITIES ii

STATEMENT OF FACTS 2

REASONS WHY THE WRIT SHOULD BE DENIED

1. THE DECISION OF THE SUPREME COURT OF TEXAS IS NOT IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT ON A FEDERAL QUESTION 4

CONCLUSION 6

CERTIFICATE OF SERVICE 7

TABLE OF AUTHORITIES

Cases Page

Arnett v. Kennedy, 416 U.S. 134 (1974) 5

Board of Regents v. Roth, 408 U.S. 564 (1972) 4, 5

Cave v. Missouri ex rel. Newell, 246 U.S. 650 (1918) 4

Higginbotham v. City of Baton Rouge, 306 U.S. 535 (1939) 4

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306,313 (1950) 5

Snowden v. Hughes, 321 U.S. 1 (1944) 4

State ex rel. Dowlen v. Rigsby, 17 Tex. Civ. App. 171, 43 S.W. 271, writ ref'd per curiam 43 S.W. 1101 (1897) 5

Tarrant County v. Ashmore, 635 S.W.2d 417 (Tex. 1982) 4, 5

Taylor v. Beckham, 178 U.S. 548 (1900) 4

Constitutions

Article V, § 18, Constitution of the State of Texas 2

No. 82-582

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

BOB ASHMORE, T. M. SHEFFIELD, BRUCE LEE, BOBBY O. BLEVINS, HERMAN DANIELS, FLOYD GRAY and JIM FERRIS, *Petitioners*

vs.

TARRANT COUNTY AND COMMISSIONERS' COURT OF TARRANT COUNTY, TEXAS MIKE MONCRIEF, County Judge, R. T. "DICK" ANDERSEN, County Commissioner, R. L. "JERRY" MEBUS, County Commissioner, A. LYN GREGORY, County Commissioner, B. D. GRIFFIN, County Commissioner, *Respondents*

Respondents' Brief in Opposition

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Respondents Tarrant County, Commissioners' Court of Tarrant County, Texas, Mike Moncrief, County Judge, R. T. "Dick" Andersen, R. L. "Jerry" Mebus, A. Lyn Gregory, and B. D. Griffin, County Commissioners of Tarrant County respectfully request that this Court deny the Petition for Writ of Certiorari to the Supreme Court of Texas and in support of such request would show as follows:

STATEMENT OF THE CASE
FACTS

Respondents set forth the salient facts of this case which were entirely omitted from the Petition for Writ of Certiorari.

Petitioners Ashmore, Sheffield, Blevins, and Gray were each Justices of the Peace in Tarrant County, Texas who were elected to office at the general election in 1978 for terms commencing on January 1, 1979. Petitioners Lee, Daniels, and Ferris were elected to the office of Constable within their respective precincts in Tarrant County at the general election held in November of 1980. Their terms of office were to commence on January 1, 1981. Under the provisions of Article V § 18 of the Texas Constitution the terms of office for Justices of the Peace and Constables are set at four years.

On August 25, 1980 the Respondent Commissioners' Court of Tarrant County exercised the power granted to it under the terms of Article V, § 18 of the Texas Constitution and abolished the then existing Justice Precincts of Tarrant County and each office therein. The abolition was ordered to become effective on January 1, 1981. By separate order of the Commissioners' Court new Justice Precincts were established and defined effective January 1, 1981.

The orders entered on August 25, 1980 were the culmination of months of study and preparation by the Commissioners' Court in their effort to create a Justice Precinct in Tarrant County in which the black citizens of Tarrant County would have a meaningful opportunity to elect officers of their choice. The basic format for the Justice Precincts of Tarrant County had been set in 1876 and

had remained largely unchanged for 104 years. As a result of the static nature of the Justice Precincts an enormous population imbalance existed in the precincts in 1980. The largest of the eight precincts had a population of over 400,000. The smallest precinct contained only 12,000 persons.

In July of 1980, the Respondent Commissioners' Court scheduled five public hearings for the purpose of receiving and explaining the final report and recommendation of Dr. John Bean, a demographic expert hired by the Respondents to assist in the reapportionment of the Justice Precincts. Each Petitioner was mailed a copy of this schedule showing the time, place and date of each meeting. The notices sent to Petitioners advised that no action would be taken until the sixth scheduled meeting of August 25, 1980. The first five meetings were scheduled for August 4-8, 1980. Each Petitioner attended at least one of these meetings, in some cases they were represented by counsel. Each Petitioner was given the opportunity to address the Commissioners' Court at any meeting and to present to that Court whatever comments, argument, or evidence that the Petitioner deemed appropriate.

Thereafter, the August 25, 1980 orders of the Commissioners' Court were submitted to the Attorney General of the United States for review under the Voting Rights Act. In early December 1980, the Attorney General advised that no objection would be interposed. Shortly after receipt of such notice the instant action was filed.

REASONS WHY THE WRIT SHOULD BE DENIED

1. THE DECISION OF THE SUPREME COURT OF TEXAS IS NOT IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT ON A FEDERAL QUESTION

The Supreme Court of Texas held that the interest of the Petitioners in their respective offices was a qualified interest and was "not 'property' within the sense of the constitutional guarantees against governmental takings of property without compensation." *Tarrant County v. Ashmore*, 635 S.W.2d 417,422 (Tex. 1982). The Texas court further recognized that though this interest was not "property" it was a sufficient interest to invoke the protection of procedural due process. *Id. ai 422.* After consideration of the salient facts, the Texas court held that the procedures employed in the instant case were sufficient to satisfy the requirements of due process. The Petitioners assertion that the Supreme Court of Texas held that they "did not have a property right protected by due process in the offices to which they were elected" is a grossly inaccurate characterization of the decision below.

The decision of the Supreme Court of Texas is consistent with the decisions of this Court. That a public office is a public trust and not property is clear from this Court's holdings in *Higginbotham v. City of Baton Rouge*, 306 U.S. 535 (1939); *Taylor v. Beckham*, 178 U.S. 548 (1900); *Cave v. Missouri ex rel. Newell*, 246 U.S. 650 (1918); and *Snowden v. Hughes*, 321 U.S. 1 (1944). The Supreme Court of Texas recognized the teachings of *Board of Regents v. Roth*, 408 U.S. 564 (1972) and its progeny that the Petitioners offices could not be abolished without procedural safeguards.

The Petitioners interest in their continuation in office is nothing more than an unilateral expectation there will be no changes made in the Justice Precincts and offices. As the final arbiter of Texas law, the Supreme Court of Texas acknowledged and reaffirmed the established law of the state that the Commissioners' Courts of Texas are empowered by the constitution and laws of Texas to alter or abolish Justice Precincts and offices "from time to time, for the convenience of the people." *Tarrant County v. Ashmore, supra*, at 423; *State ex rel Dowlen v. Rigsby*, 17 Tex. Civ. App. 171, 43 S.W. 271, *writ ref'd per curiam* 43 S.W. 1101 (1897).

The abolition of the Petitioners' offices did not reflect adversely upon the Petitioners' individual character or abilities. Abolition did not carry with it the subjection of Petitioners to embarrassment, shame or humiliation. Under such circumstances the full panoply of due process safeguards afforded in criminal trials or "name clearing" hearings is not required. *Board of Regents v. Roth, supra; Arnett v. Kennedy*, 416 U.S. 134 (1974). The Petitioners were entitled to, and received, notice and an opportunity to be heard. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306,313 (1950).

CONCLUSION

The Petition for Writ of Certiorari to the Supreme Court of Texas should be denied.

Respectfully submitted,

TIM CURRY
Criminal District Attorney
Tarrant County, Texas

FREDERICK M. SCHATTMAN
Assistant District Attorney
State Bar No. 17728400
200 West Belknap Street
Fort Worth, Texas 76102
817/334-1657

Attorneys for Respondents

CERTIFICATE OF SERVICE

I certify that three true and correct copies of the foregoing Brief in Opposition has been this day served upon Mr. Jim Claunch, Attorney for Petitioners by delivering the same via United States Certified Mail, return receipt requested, postage prepaid, addressed as follows:

Mr. Jim Claunch
817 Penn Street
Fort Worth, Texas 76102

Dated this ____ day of November, 1982.

FREDERICK M. SCHATTMAN